



STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

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March 2, 2007

The Honorable Timothy S. Bee
President
Arizona State Senate
1700 West Washington Street
Senate Office Building
Phoenix, Arizona 85007

Re: SB 1302: self-defense; home protection; applicability

Dear President Bee:

Let me begin by expressing my sincere appreciation for the constructive tone that has marked the legislative session to date, and for your role in helping to set that tone. I believe the people of Arizona are well served by the thoughtful and collaborative spirit that you and other members of the legislature have brought into this legislative session, and I look forward to continuing to work with you in that spirit to do what is best for our state.

Despite that cooperative spirit, there will of course be some issues on which we cannot agree. Regretfully, such an issue has arisen with respect to Senate Bill 1302, which would have made the justification defense we created last year through Senate Bill 1145 retroactive to any case pending trial as of April 24, 2006. Although I remain very optimistic that the bipartisan and cooperative tone that has marked this session so far will lead to fewer bills being vetoed this year than in prior years, I have today vetoed Senate Bill 1302.

Although I understand this bill was intended to cover one specific case where a defendant was unable to invoke our new law and was convicted of second degree murder, I am told by several of Arizona's leading prosecutors (Republican and Democrat) that this bill would lead to the reopening of a large number of cases, including routine cases where a criminal has already pled guilty to assault or aggravated assault. Prosecutors are particularly concerned that if this law were applied retroactively, they would be deluged by motions pursuant to Ariz. R. Crim. P. 32.1(g), which allows defendants who have pled guilty to crimes to file post-conviction relief proceedings when there has been a significant change in the law related to their conviction. See, e.g., *Supp. Amicus Brief of the Maricopa County Attorney in Garcia v. Browning*, CV-06-0320-PR (Nov. 13, 2006) at 8, 14 (noting that the Maricopa County Attorney "expects that defendants in many other cases" will seek

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retroactive application of the justification defense and noting that such retroactive application "makes no sense" and would create "a rule that is impossible to administer").

I have also heard from victims rights groups that it is unfair to crime victims to re-open cases where a criminal has already pled guilty.

When the legislature seeks to have a criminal law applied retroactively, it is important that such legislative intent be expressed at the time the law is passed, not a year later (and by a different legislature). Otherwise, too many cases that have proceeded through our overburdened criminal justice system need to be resolved again, thereby re-opening wounds for the victims of those crimes and delaying other cases awaiting trial. To the extent we are re-trying old cases, prosecutorial work on new and substantial matters is either suspended or delayed. Such a result is not in the state's best interest.

For these and other reasons, I have vetoed Senate Bill 1302.

Yours very truly,



Janet Napolitano
Governor

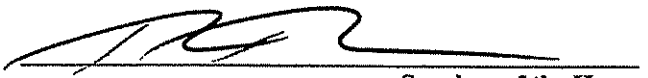
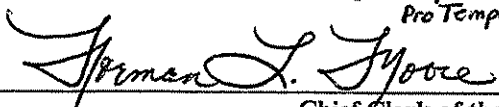
JN:TAN/jm

cc: The Honorable Jim Weiers
The Honorable Linda Gray

Passed the House February 26, 2007,

by the following vote: 42 Ayes,

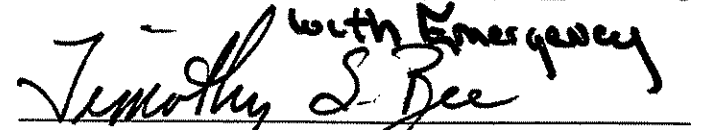
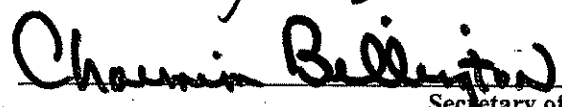
17 Nays, 1 Not Voting
With Emergency


Speaker of the House
Pro Tempore

Chief Clerk of the House

Passed the Senate February 20, 2007,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting
With Emergency



President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

27th day of February, 2007

at 1:00 o'clock P. M.


Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

WET

Governor of Arizona

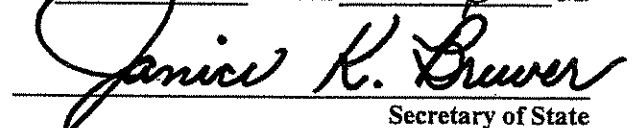
S.B. 1302

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 2nd day of March, 2007,

at 4:33 o'clock P. M.


Secretary of State